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| APPLICATION NO.                  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------------|-------------|----------------------|---------------------|------------------|
| 10/542,868                       | 07/20/2005  | Jochen Bals          | 487.1100            | 2403             |
| 23280                            | 7590        | 04/16/2008           | EXAMINER            |                  |
| Davidson, Davidson & Kappel, LLC |             |                      | CHENEVERT, PAUL A   |                  |
| 485 7th Avenue                   |             |                      |                     |                  |
| 14th Floor                       |             |                      | ART UNIT            | PAPER NUMBER     |
| New York, NY 10018               |             |                      | 3612                |                  |
|                                  |             |                      | MAIL DATE           | DELIVERY MODE    |
|                                  |             |                      | 04/16/2008          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/542,868             | BALS, JOCHEN        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Paul A. Chenevert      | 3612                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 July 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 23-47 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 23,24,26,27,33,37-41 and 44-47 is/are rejected.  
 7) Claim(s) 25,28-32,34-36,42 and 43 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 20 July 2005 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2005 07 20</u> .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the vehicle flap and the vehicle flap frame must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
3. The drawings are objected to because of the following minor informalities:
  - a. Reference numbers that employ arrow tips on their lead lines should not touch any one part, yet they should point in the general location of the collection of the parts according to 37 CFR 1.84(r)(1).
  - b. Reference number 12 designating the curvature of the V-shaped inner segment (9) should be added to Figure 1 (see paragraph 0030, line 3).
  - c. A hole should be drawn on the right extension (6) in Figure 1 and the reference number 8a should be employed to designate the cylindrical holder (see paragraph 0027, line 6).
  - d. Rotation direction arrow is missing next to reference letter 'a' on mount 24 in Figure 3 (see Figure 4 for proper placement & paragraph 0053, line 2).

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4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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6. The abstract of the disclosure is objected to because all occurrences of “said” should be changed to “the”. Correction is required. See MPEP § 608.01(b).

7. The disclosure is objected to because of the following informalities:

- a. Paragraph 0036, line 4, “extension 7” should be changed to “extension 6”.
- b. Paragraph 0036, line 5, “fixed” should be deleted.
- c. Paragraph 0053, line 11, “plate 2c” should be changed to “plate 2b”.

Appropriate correction is required.

### ***Claim Objections***

8. Claims 29-32 & 47 are objected to because of the following informalities:

- a. Claims 23-47 disclose a hinge in subcombination with a vehicle flap, yet on Claim 29, line a combination is disclosed when the web fastens it to the flap. It is recommended to change “fastening it to the flap” to “and wherein the web is fastenable to the flap”. It is also noted that the use of “it” in the claims is vague and not allowed.
- b. Claim 30, line 2, “by” should be inserted before “the drive shaft”.
- c. Claim 47 should depend from claim 46, which is the first introduction of the drive axis.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 23, 24, 26, 27, 37-41 & 44-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Schachtl (US 2004/0244294 A1; published 09DEC04; PCT/EP02/11616 filed 17OCT02; DE 101 52 696.2 filed 19OCT01).

In regards to claim 45 (the broadest claim), Schachtl discloses a vehicle flap hinge, comprising a first hinge part (hinge strap 2) fastened to the vehicle flap (vehicle tailgate 3); a second hinge part (hinge 5) fastened to the vehicle flap frame (body 6); a hinge pin (hinge spindle 4) connecting the first hinge part and the second hinge part to each other in a pivotably manner about a pivot axis; the hinge pin is accommodated in a rotationally fixed manner in the second hinge part and is mounted pivotably in the first hinge part; and a lever arrangement (lever mechanism 9) coupling the first hinge part to the second hinge part; the lever arrangement comprising a first lever (driven lever 12) connected pivotably to the first hinge part; and wherein the lever arrangement comprises three axes (driven shaft 11, pivoting bearing 15, pivoting bearing 16) arranged outside the hinge pin pivot axis (pivoting bearing 18).

In regards to claim 23, Schachtl discloses a vehicle flap hinge, comprising a first hinge part (hinge strap 2) fastened to the vehicle flap (vehicle tailgate 3); a second hinge part (hinge 5) fastened to the vehicle flap frame (body 6); a hinge pin (hinge spindle 4) connecting the first

hinge part and the second hinge part to each other in a pivotably manner about a pivot axis; the hinge pin is accommodated in a rotationally fixed manner in the second hinge part and is mounted pivotably in the first hinge part; and a lever arrangement (lever mechanism 9) coupling the first hinge part to the second hinge part; the lever arrangement comprising a first lever (driven lever 12) connected pivotably to the first hinge part; and a motor (electric motor 7) arranged on the second hinge part by a mount (8); and wherein the first lever of the lever arrangement is driven rotationally by the motor.

In regards to claim 24, the lever arrangement and the motor are arranged in an angle region defined by the two hinge parts and wherein the angle region is to the inside with respect to the vehicle flap.

In regards to claim 26, the lever arrangement comprises a second lever (coupling bars 13, 14), and wherein the lever arrangement defines at least one auxiliary pivot axis (pivoting bearing 16) which is arranged parallel to the hinge pin pivot axis (18).

In regards to claim 27, the first lever (12) and the second lever (13, 14) are connected to each other pivotably in the auxiliary pivot axis (16).

In regards to claim 37, the lever arrangement comprises at least three axes (11, 15, 16) being arranged outside the hinge pin pivot axis (18).

In regards to claim 38, the lever arrangement defines a step-up from the motor to the second hinge part.

In regards to claim 39, the motor is provided on a drive axis (11) which is parallel to the hinge pin pivot axis (18).

In regards to claim 40, the drive axis is provided outside the pivot axis.

In regards to claim 41, the lever arrangement is arranged between the two hinge parts and the holder for the motor.

In regards to claim 44, the motor is assigned a clutch (angle transmitter 19) which defines an idling of the motor.

In regards to claim 46, the motor is provided on a drive axis (11) which is parallel to the hinge pin pivot axis (18).

In regards to claim 47, the drive axis is provided outside the pivot axis.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schachtl in view of obvious common knowledge.

Schachtl discloses a vehicle flap hinge, as described above, with a lever arrangement comprising first lever (12) and a second lever (13, 14)

However, Schachtl does not expressly disclose that the first lever is an H-shaped lever and that the second lever is a kidney-shaped lever.

The Examiner hereby takes Official Notice that selecting lever shapes is an obvious design choice, which was notoriously well known to a person having ordinary skill in the art at the time of the invention.

The suggestion/motivation for doing so would have been to allow for various loads to be placed on a variety of lever shapes and sizes, as is desired in this vehicle invention.

Therefore, it would have been a desirable and thus a *prima facie* obvious modification of the vehicle flap hinge of Schachtl by combining various shaped levers with the hinge parts and motor to obtain the invention as specified in claim 33, as taught by the prior reference's motivation and obvious common knowledge, and not hindsight from the applicant's disclosure.

***Allowable Subject Matter***

13. Claims 25, 28-32, 34-36, 42 & 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Chenevert whose telephone number is (571)272-6657. The examiner can normally be reached on Mon-Fri (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Glenn Dayoan/  
Supervisory Patent Examiner, Art Unit 3612

Paul A. Chenevert  
Examiner  
Art Unit 3612

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